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IN THE

Supreme Court of the United States

OCTOBER TERM, 1965

No. 1184

NORMAN BENNETT,

Petitioner,

v.

FORD MOTOR COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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IN THE

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No.

NORMAN BENNETT,

Petitioner,

v.

FORD MOTOR COMPANY,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

Petitioner, Norman Bennett, respectfully prays for writ of certiorari to review the Judgment of the United States Court of Appeals for the District of Columbia Circuit, entered in the above-entitled cause on January 6, 1966.

OPINION BELOW

No opinion was issued below. The judgment of the Court of Appeals, without opinion, is attached as an appendix hereto.

JURISDICTION

This case involved a complaint for invasion of privacy. On March 17, 1965, the United States District Court for the District of Columbia granted defendant's motion for summary judgment.

On January 6, 1966, the United States Court of Appeals for the District of Columbia Circuit affirmed the judgment of the District Court. This decision of the Court of Appeals was made by two judges of the presiding panel; senior presiding Judge Fahy did not participate in this decision.

The jurisdiction of this Court is invoked under 28 U.S. Code § 1254(1).

QUESTIONS PRESENTED

Where a veteran is engaged in civil litigation with a corporate defendant,

1. May the veteran's military service records, which are declared confidential and privileged by Federal statute and regulation, be examined with impunity by such corporation, over the veteran's objections?

2. Does the veteran have a cause of action for an unconstitutional invasion of his privacy, where his confidential military service records are gained access to by such corporation over the veteran's objections?

STATUTORY PROVISIONS

The following regulations, promulgated under authority of Title 5, U.S. Code, § 1002, appear in Title 32, Code of Federal Regulations:

> Section 701.1(c) *No access:* Without limiting the discretion vested in the Secretary of the Navy by the other provisions of this rule, access will not be granted to: (1) Material classified "confidential."

Section 701.1(e) *Service Records:* Officers' and enlisted members' service records are deemed *confidential* for good cause found within the meaning of this rule except to persons properly and directly concerned, including the serviceman himself, and personal representatives of the serviceman; etc., executors, guardians, etc., who present proper proof thereof.

Section 701.2(a) *Authorization Required:* Unless authorized by the Secretary of the Navy or his designee, persons in the Naval Service and civil employees are prohibited from releasing or producing, in response to Subpoenas Duces Tecum, motions for discovery, or in answer to interrogatories or otherwise, any official records or copies thereof, including the records described in paragraph (b) of this section or classified matter, in a civil court, or in connection with preliminary investigations by attorneys or others . . . .

Section 701.2(b) *Records of Courts Martial and Investigations:* The records of proceedings of Navy Courts Martial, Courts of Inquiry, boards of Investigation, and the records of investigations and administrative reports are intended solely for use in the Naval Establishment and are privileged.

Section 701.2(c) *Production of official records in response to Court Order;* Except as noted in paragraph (d) of this section, in cases where naval records are desired by or on behalf of litigants and where records are not classified or of privileged and confidential status as described in paragraph (b) of this section, such parties will be informed that the procedure for production of the records desired . . . is to obtain . . . a court order calling for the particular records desired.

STATEMENT OF THE CASE

While petitioner, a Navy veteran, and respondent were engaged in civil litigation, respondent mailed to the Navy Department a Subpoena Duces Tecum, seeking the production in Court of petitioner's military service records. Then, prior to the date called for in the subpoena, respondent's representatives appeared before the Naval Of-

ficer who had physical custody of such records. The alleged purpose of such visit was to determine which records should be produced in Court. Instead, respondent's representatives demanded, and, over the objection of petitioner's counsel, were allowed access to such records. Respondent's agents examined such records thoroughly and dictated to an employee notes concerning such records.

Revealed were certain derogatory reports, embarrassing details of certain aspects of petitioner's military service, reports of boards of investigation, etc. These records were in no way relevant to the pending litigation, were confidential and privileged under the provisions of the Code of Federal Regulations, and their disclosure caused petitioner embarrassment and mental anguish.

Information gained by respondent from such records were even used by respondent, in a motion for summary judgment, filed in the instant action, to make unfounded and malicious insinuations that the petitioner had sought to recover in certain personal injury actions for injuries actually sustained while in the service.

Petitioner thereupon filed an action against respondent for invasion of privacy. Respondent's motion for summary judgment was granted. This action was affirmed by two judges of the three-judge panel of the Court of Appeals.

REASONS FOR GRANTING WRIT

1. The holding in this case, if not reversed, provides precedent and authority for the proposition that a veteran's military service records may be examined with impunity, if such veteran is involved in litigation, despite the fact that Federal Regulations specifically declare such records as confidential and privileged and immune from scrutiny.

2. The holding, in this case, if not reversed, destroys the individual's constitutional right to privacy, if such in-

dividual happens to be involved in litigation, despite the fact that the invasion of his privacy is in no way pertinent to the pending litigation, but probes into privileged matters.

3. The holding in this case controverts other rulings of Federal courts which protect such records and the right to privacy thereof.

4. The holding in this case endangers the privileged and confidential status of government records, despite the intent of Federal statute and regulations to safeguard such records.

ARGUMENT

The right of an individual to file an action at law for invasion of privacy has been specifically recognized in the District of Columbia, in the case of *Bernstein v. National Broadcasting Company*, 129 F. Supp. 817, aff'd, 98 U.S. App. D.C. 112, 232 F.2d 369. That case held that the gravamen of an action for invasion of privacy is "the wrongful intrusion into one's private activities." Such definition precisely describes the activity of respondent in the instant case.

The inviolability of such records, as involved herein, has been specifically declared in other decisions. Thus, in *Harris v. Walsh*, 51 App. D.C. 167, 277 Fed. 569, it was held that Selective Service Records are confidential and may not be produced in Court.

In *Bayarsky v. Brooks*, 51 F. Supp. 974, the Court refused to compel production of Justice Department records where departmental regulations made such records confidential. In *Fed. Life Ins. Co. v. Holod*, 30 F. Supp. 713, a party's World War Draft records were held confidential and not subject to production in Court.

Likewise, in *Castellano v. Penn Reading Seashore Lines*, 15 F.R.D. 276, the Court held that ICC records, which were made confidential by department regulations,

could not be produced for inspection. See also *United States v. Caserta*, 199 F.2d 905, in which a conviction for income tax evasion was reversed because of the introduction into evidence of defendant's Selective Service Records because, "It has uniformly been held that a third party cannot compel the production of these (records) unless the registrant consents."

In addition to these case rulings, the provisions of the Code of Federal Regulations, cited *supra*, specifically prohibited any access to such records. Notwithstanding the foregoing, the effect of the ruling in this case has been to destroy completely the confidential nature of such records and to allow respondent to pry into the same with impunity.

Petitioner has learned that, because of the ruling in this case, the American Legion, Department of the District of Columbia, has prepared a Resolution recommending: (a) that the American Legion declare its support of all Federal Regulations providing for strict enforcement of the right of privacy of veterans' files and records; (b) that the American Legion take any necessary action to safeguard such rights; (c) that the American Legion seek to file a brief as Amicus Curiae in this matter.

CONCLUSION

Recent disclosures before Senatorial Investigation Committees have revealed the arrogance and ruthlessness of large and powerful corporations in harassing individuals who may be involved in litigation with such corporations, and in violating their rights of privacy. The actions of respondent herein further exemplified the contempt with which such corporations view individual rights and Federal regulations which seek to protect such rights.

In view of all the foregoing, petitioner submits that not only were his individual rights violated, but that the ruling in this case endangers the rights of all veterans and the sanctity of confidential and privileged records.

Petitioner therefore respectfully submits that this petition for writ of certiorari should be granted.

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CERTIFICATE OF SERVICE

Copies of the foregoing Petition mailed this 1st day of April, 1966, to Steptoe & Johnson, Shoreham Building, Washington, D. C., attorneys for respondent.

_____
Samuel Intrater

APPENDIX

[Filed January 6, 1966]

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 19,370 September Term, 1965.

Norman Bennett, Civil 2520-64

Appellant,

v.

Ford Motor Company,
a corporation,

Appellee.

Appeal from the United States District Court for the District of Columbia.

Before: Fahy, Burger and McGowan, Circuit Judges.

JUDGMENT

This cause came on to be heard on the record on appeal from the United States District Court for the District of Columbia, and was argued by counsel.

On consideration whereof It is ordered and adjudged by this Court that the judgment — of the District Court appealed from in this cause be, and it is hereby, affirmed.

It is further ORDERED by the Court that appellee herein recover from appellant its taxable costs on this appeal, and have execution therefor.

Per Curiam.

Dated: JAN 6 - 1966

Circuit Judge Fahy did not participate in the decision of this case.

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OPINION BELOW

No opinion was issued below. The judgment of the Court of Appeals sought to be reviewed affirmed an order of the District Court, also without opinion, granting summary judgment for respondent. The Court of Appeals' judgment is attached as an exhibit to the Petition.

JURISDICTION

The jurisdictional grounds in this case have been adequately stated in the Petition.

QUESTION PRESENTED

The question presented in this case is not that stated by petitioner.

The question instead, is *whether a private cause of action for invasion of privacy arose out of the inspection by respondent's counsel of certain of petitioner's Navy service records where the inspection was pursuant to a valid, outstanding subpoena duces tecum and authorized by Navy Regulations and Judge Advocate General's Department.*

More particularly, since there was no opinion issued by the court below and its decision is strictly limited to the facts of this case, the question is whether that inspection constituted an actionable invasion of privacy when: (1) the records were relevant to petitioner's qualifications as an expert witness in the pending suit; (2) respondent was advised by the Navy Judge Advocate General's Office that the records could be obtained under Navy Regulations by subpoena; (3) respondent's counsel issued such a subpoena in strict compliance with Rule 45 of the Federal Rules of Civil Procedure, with reasonable notice to opposing counsel; (4) opposing counsel made no effort whatsoever to quash or modify the subpoena; and (5) pursuant to the subpoena and after further notice to opposing counsel the records were examined for the purpose of determining which would be necessary for trial, with the approval and under the supervision of the Judge Advocate General's Department, commencing while petitioner's counsel was present.

STATUTES AND REGULATIONS INVOLVED

In addition to the Regulations set forth by petitioner, the following statute and Regulations are involved in this case:

Statute:

Administrative Procedure Act, Section 3(c), 60 Stat. 238, 5 U.S.C. §1002 (c) (1958):

> "Save as otherwise required by statute, matters of official record shall in accordance with published rule be made available to persons properly and directly concerned except information held confidential for good cause found."

Regulations:

32 C.F.R. §701.2 (d):

> "*Exceptions.* Where not in conflict with the restrictions in paragraphs (a) and (b) of this section relative to confidential matter, the production in Federal, State, Territorial, or local courts, of the service, employment, pay, or medical records (including medical records of dependents) of persons in the naval service is authorized upon receipt of a court order, where litigation is pending without procuring specific authority from the Secretary of the Navy. Where travel is involved, it must be without expense to the Government or to the person producing the records."

32 C.F.R. §701.2 (b):

Part of this section is set forth in the Petition. The Petition, however, omits the following:

> " * * * The Secretary of the Navy, or his designee may make such records or information therefrom available to persons properly and directly concerned whether or not litigation is involved."

STATEMENT OF THE CASE

This is a simple tort case which both courts below found in effect without merit, and which presents no basis, constitutional or otherwise, for review by this Court. Petitioner's complaint, filed after he lost a suit against

respondent for patent infringement,[1] sought to recover five million dollars for the alleged invasion of his privacy resulting from the examination of his Navy personnel records by counsel for respondent during the patent suit trial preparations to check petitioner's claimed qualifications as an engineer based upon his education and experience while in the Navy, to testify that in his expert opinion, respondent had infringed his patent.[2]

Although not mentioned in his petition, petitioner was given timely and full notice in writing of respondent's proposed course of action with respect to inspection of his records[3] and he knew that the Navy Department intended to permit such inspection.[4] Although he had almost two weeks in which to do so, petitioner nevertheless chose not to take any action whatsoever at that time to question in the court where his case was pending, the propriety or validity of the subpoena which was the basis for the Navy Department's intended action.[5]

As it turned out, none of the information or documents were actually used in the patent trial.[6] The instant suit was based upon only eight specific documents,[7] all of

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[1] *Bennett v. Ford Motor Co.*, 1963, 117 U.S.App.D.C. 34, 325 F.2d 230, cert. denied 377 U.S. 932.

[2] Affidavit of Laidler B. Mackall, paras. 3, 4, Joint Appendix (hereafter referred to as J.A.) 10-11.

[3] Mackall affidavit, para. 7, J.A. 11-12.

[4] Affidavit of Lt. Col. Thomas B. Sparkman, USMC, para. 6, J.A. 25; Mackall affidavit, para. 9, J.A. 12.

[5] See Sparkman affidavit, para. 6, J.A. 25; Fed.R.Civ.P. 45(b) provides that the proper procedure for contesting the validity of a subpoena is to file a motion to quash the subpoena in the court out of which it issued.

[6] Mackall affidavit, para. 15, J.A. 15

[7] See J.A. 36-47.

which were rather routine in nature.[8] The only "publication" of the eight documents complained of in the present action, other than examination by respondent's counsel in the presence of his own secretary and the official custodian, was the result of court-required production in the present case.

Respondent filed a motion for summary judgment supported, inter alia, by affidavits of counsel, of the Judge Advocate General Department's officer actually supervising the inspection and the opinion by the administrative officer designated by the Secretary of the Navy to control release of information from the naval personnel records of individuals involved in litigation that the inspection was authorized by the applicable statute and regulations.[9] The District Judge entered an order granting summary judgment[10] and the Court of Appeals affirmed without opinion.[11]

No claim for violation of any constitutional right was made by petitioner either in the trial court or in the Court

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[8] Five of the eight documents were fitness reports, the first characterizing petitioner as an officer of "average" ability whose performance of duty was "satisfactory and nothing more". The second report notes petitioner would have to show improvement in certain areas for retention. However, endorsement attached to the final fitness report relied upon by petitioner is extremely complimentary since it states that petitioner had "performed excellent work" and had "demonstrated that he is a responsible young officer of promise". J.A. 43. This final evaluation is substantiated by petitioner's subsequent three promotions to the rank of lieutenant commander before retiring in 1949 for physical disability. The remaining three documents relate to an airplane accident in which petitioner was injured. These documents clearly exonerate petitioner from any responsibility for the accident and in no way reflect adversely upon his character, ability or reputation.

[9] J.A. 10-16, 16-19, 24-26.

[10] J.A. 48.

[11] See Appendix to Petition.

of Appeals. Petitioner claims in his petition here an "unconstitutional invasion of his privacy" (page 2). Significantly however, nowhere in the petition does he set forth the constitutional basis for this contention.

ARGUMENT

1. No Constitutional Issues Raised.

Petitioner himself did not even refer to, much less rely upon, any provision of the Constitution in the District Court or the Court of Appeals. The judgment below, being without opinion, therefore holds only that under the facts of this simple tort case, the inspection by a private defendant of plaintiff's naval service records pursuant to a valid, outstanding subpoena in connection with pending litigation did not constitute an actionable invasion of plaintiff's privacy. All that is involved is whether an actionable tort has been committed by a private party in the process of litigation as a private party. No constitutional issues are in any way presented and no amount of empty semantics can convert this case into one warranting review by this Court on certiorari.

2. No Broad or Important Questions of Law Involved Affecting the Public Interest

The decision does not hold, or even suggest, as petitioner states, that a "veteran's service record may be examined with impunity, if such veteran is involved in litigation" (page 4). Rather, at the very most, it merely holds that a private cause of action for invasion of privacy does not arise out of the mere inspection by a defendant's counsel in connection with pending litigation of certain of plaintiff's naval personnel records when: (1) it reasonably appears that the records were relevant to determine petitioner's claimed qualifications to testify

as an expert witness in the pending suit;[12] (2) respondent is advised by the Navy Judge Advocate General's Office that production and inspection of the records could be obtained under Department of the Navy Regulations by directing a subpoena therefor to the custodian of the records;[13] (3) respondent's counsel in strict compliance with Rule 45 of the Federal Rules of Civil Procedure, accordingly issues such a subpoena with notice to opposing counsel;[14] (4) opposing counsel makes no effort to quash or modify the subpoena;[15] (5) pursuant to the subpoena and further notice to opposing counsel, the records were examined with the approval and in the presence of their custodian,[16] for the purpose of determining which would be necessary for trial.[17]

Since no opinion was issued in this case, the decision which is strictly limited to the facts of this case, is no precedent for any new rule of law and the decision affects no one other than petitioner. Nor can the significance of the decision be artificially increased by petitioner's implication that the American Legion will seek to file a brief amicus here in order to "safeguard the right of

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[12] Also relevant to possible question of credibility in view of petitioner's three prior personal injury suits. See Mackall affidavit, paras. 4 and 5, J.A. 11; Letter of September 24, 1962 to Office of Department of the Navy, Office of the Judge Advocate General, J.A. 21.

[13] Mackall affidavit, para. 6, J.A. 11.

[14] Mackall affidavit, para. 7, J.A. 11-12.

[15] As required by Rule 45(b). Sparkman affidavit, para. 6, J.A. 25.

[16] Petitioner's counsel, who was present during the first day of this examination, knew that in the absence of court action quashing or modifying the subpoena, the examination would be completed within the following day or so.

[17] Mackall affidavit, paras. 7-11, J.A. 11-13.

privacy of veterans' files and records" (page 6). He made a similar attempt to have the American Legion file a brief amicus before the Court of Appeals but no such action was there taken by the American Legion and there is no reason to believe that the Legion will seek to intervene here when it did not do so in the Court of Appeals.

3. No Federal Question Involving Violation of Federal Statute or Regulation

Petitioner's unequivocal assertion that the Navy regulations involved "specifically declare such records as *confidential and privileged and immune from scrutiny*" (page 4), flies in the very teeth of the language of the Navy regulations themselves as well as the statute upon which they are based. Thus the statute, which was not mentioned or set out in the petition, states: "matters of official record *shall* in accordance with published Rule *be made available to persons properly and directly concerned.*[18]

This permissive language of the statute is reflected in the Navy Regulations which state the records are confidential "*except to persons properly and directly concerned.*" § 701.1(e). That respondent, a party to litigation in which the service records are pertinent, is "properly and directly concerned" is made clear by Section 701.2(d) which expressly authorizes the production of "the service, employment, pay or medical records . . . of persons in the Naval service . . . upon receipt of a Court order, where litigation is pending" and by Section 701.2(c) which states the procedure for obtaining production of those records where they "are desired by or on behalf of litigants."

Furthermore, Section 701.2(a) makes such records available whenever "authorized by the Secretary of the

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[18] Administrative Procedure Act § 3(c), 60 Stat. 238, 5 U.S.C. § 1002 (c) (1958) (Emphasis Added)

Navy or his designee". The inspection in this case was specifically authorized by the Secretary of the Navy's designee, the officer in charge of the records.[19]

Finally, that the inspection in this case was in full accord with the applicable statute and regulations is established by the opinion to this effect, entitled to great weight, of the administrative officer designated by the Secretary of the Navy to control the release of information from service records in connection with pending litigation.[20] The decision below, contrary to petitioner's assertions, does not violate those regulations but rather gives effect to their clearly intended purpose.

4. There Is No Conflict of Decision

The decision below is fully consistent with all relevant precedent. Petitioner's contention that the decision "controverts other rulings of the federal courts" (page 5) is simply not supported by the six cases he cites. Five decisions involved the production of certain records of the Justice Department, Selective Service Commission and Interstate Commerce Commission and are clearly distinguishable in that: (1) in each case the party whose records were involved, unlike petitioner here, made a timely objection to the Court against their production; (2) in each, unlike the regulations here, there were no provisions for release or production of the records; and (3) none of the cases involved or even considered the question whether an examination of the records by a private party gave rise to a cause of action for damages for invasion of privacy.

Only one decision is cited involving a suit for invasion of privacy, *Bernstein v. National Broadcasting Co.*, D.C.,

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[19] See Sparkman affidavit, paras. 6-8, J.A. 25-26.

[20] Affidavit of Gale E. Krouse, J.A. 16.

D.C. 1955, 129 F.Supp. 817, aff'd 1956, 98 U.S.App.D.C. 112, 232 F.2d 369, cert. denied 352 U.S. 945. This case, setting out the elements which must be present to state a cause of action for invasion of privacy, is not only consistent with but compels the decision of the Court of Appeals here. Of the four prerequisites listed in *Bernstein* as uniformly required,[21] all are lacking here. These are: (1) the examination of the records must be *wrongful* (not wrongful here because pursuant to an outstanding subpoena and authorized by statute, regulation and the record custodian); (2) there must be *publication* of their contents;[22] (no publication here before the present action, prior inspection limited to respondent's counsel, his secretary and the official custodian in addition to petitioner's counsel); (3) examination must be *unwarranted*[23] (not unwarranted here because relevant to pending litigation and pursuant to valid, outstanding subpoena) and;

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[21] 129 F.Supp. at 831.

[22] *Peterson v. Idaho First National Bank*, 1961, 83 Idaho 578, 367 P.2d 284; *Patton v. Jacobs*, 1948, 118 Ind.App. 358, 78 N.E. 2d 789; *Gregory v. Bryan Hunt Co.*, 1943, 295 Ky. 345, 174 S.W. 2d 510; *Voneye v. Turner*, Ky. 1951, 240 S.W. 2d 588; *Hawley v. Professional Credit Bureau, Inc.*, 1956, 345 Mich. 500, 76 N.W. 2d 835; *Lewis v. Physicians & Dentists Credit Bureau*, 1947, 27 Wash. 2d 267, 177 P.2d 896.

[23] A communication privileged as part of a pending judicial proceeding for purposes of libel and slander is similarly privileged for purposes of an action for invasion of privacy. See Warren & Brandeis, *The Right To Privacy*, 4 Harv. L.Rev. 193, 216 (1890). That this privilege applies to the inspection of records pursuant to Court subpoena in connection with pending litigation is clear. See e.g., *Borg v. Boas*, 9 Cir. 1956, 231 F.2d 788, 794; *Brown v. Shimabukuro*, 1941, 73 U.S.App.D.C. 194, 118 F.2d 17, and other cases cited on pp. 26-28 of Appellee's Brief before the Court of Appeals in this case. On the question of waiver of the right to privacy in this case, see *Tooley v. Provident Life & Acc. Ins. Co.*, La. App. 1963, 154 So.2d 617, *writ refused*, 244 La. 1019, 156 So.2d 226; *Forster v. Manchester*, 1963, 410 Pa. 192, 189 A.2d 147.

(4) the contents must be such that their publication *"would cause mental suffering, shame or humiliation to a person of ordinary sensibilities"*.[24] (As we have seen, footnote 8, page 5, in none of the documents, the examination of which is complained of, was there the slightest adverse reflection on petitioner's loyalty, morality, integrity or any other aspect of his character which would have caused "mental suffering, shame or humiliation".)

Thus the decision of the Court of Appeals here is fully consistent with and supported by both the *Bernstein* case and the numerous other cases defining actionable invasion of privacy.[25] The decision here, therefore, is neither novel nor significant except to the parties. The facts simply fall short in every required respect for making a case for invasion of privacy.

CONCLUSION

For the foregoing reasons, the petition for certiorari should be denied.

Respectfully submitted,

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[24] 129 F.Supp. at 831.

[25] See cases cited in notes 22 and 23, *supra*.

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PETITION FOR REHEARING

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PETITION FOR REHEARING

Comes now the petitioner and respectfully requests a re-hearing in this cause, and as grounds therefore respectfully states as follows:

I.

Failure to grant certiorari herein will set up a precedent which can result in the filing of a multiplicity of spurious law suits by parties, who merely wish to gain access to confidential records of other citizens.

II.

Since the filing of the original briefs herein, petitioner has received documentary evidence of misrepresentations in Respondent's Brief.

III.

The holding of the trial court was transcribed and as such is an official part of this case and grounds for a precedent in future cases. This Court did not have such transcript before it when it ruled on the petition herein.

ARGUMENT

I.

This is an action in which respondent - defendant to a law suit by petitioner - obtained access to confidential records of petitioner. This was done without any court order, without authority, and in violation of Federal statute.

If the ruling herein is allowed to stand, it is a precedent which will stimulate the filing of spurious lawsuits by any unscrupulous party who wishes to gain access to the confidential records of another.

II.

In its brief, respondent made numerous allegations which petitioner contends are without foundation (see affidavit attached hereto). As an example, respondent stated on page 8 of its brief that petitioner had made efforts to have the American Legion file a brief amicus curiae in the Court of Appeals. The letter and resolution attached hereto as Exhibit A, and received by petitioner after the filing of briefs,

shows that such allegation of respondent is without foundation.

This is merely an example of numerous misrepresentations and misleading allegations of respondent.

Thus, also on page 8 of its brief, respondent alleged that it was authorized to inspect petitioner's records since the Navy Regulations made such available "to persons properly and directly concerned." This quotation was taken out of context, and eliminated the important qualifying words "including the serviceman himself and personal representatives of the serviceman, e.g., executors, guardians, etc. who present proper proof."

Other misrepresentations and misleading statements are set forth in the affidavit attached hereto.

III.

Petitioner is informed that this Court did not consider the transcript of the ruling of the District Court. Since this transcript contains the law as handed down by such Court and creates a precedent for future cases, it is important for this Court to reexamine this matter with such transcript before it.

Petitioner therefore prays for a rehearing in the above-entitled matter.

ALBERT BRICK
SAMUEL INTRATER
1010 Vermont Avenue, N. W.
Washington, D. C. 20005
Attorneys for Petitioner

CERTIFICATE

I hereby certify that this petition is presented in good faith and not for purposes of delay and that such petition is restricted to intervening circumstances of substantial effect and to grounds not previously presented.

Samuel Intrater
Attorney for Petitioner

Copy of the foregoing petition mailed this ____ day of June, 1966, to Steptoe & Johnson, Shoreham Building, Washington, D.C., attorneys for respondent.

Samuel Intrater

APPENDIX A

THE AMERICAN LEGION
DEPARTMENT OF THE DISTRICT OF COLUMBIA

1417 K STREET, NORTHWEST
WASHINGTON, D. C. 20005
Metropolitan 8-2736

RICHARD R. GIASSON
DEPARTMENT COMMANDER

VICE COMMANDERS
W. DONALD CALOMIRIS
FRANCIS J. DONNELLY
ROBERT G. ROSENBERG
CARLOS ROSARIO
CHARLES H. CROSS

H. VICTOR CONWELL
DEPARTMENT ADJUTANT
FRANK E. ALDRIDGE
DEPARTMENT FINANCE OFFICER
ALLYN C. DONALDSON
NATIONAL EXECUTIVE COMMITTEEMAN
FRANK J. SPECHT
ALTERNATE
NATIONAL EXECUTIVE COMMITTEEMAN

May 18, 1966

Mr. Norman Bennett
U. S. Merchandise Mart Inc.
4600 Wisconsin Avenue, N.W.
Washington, D.C. 20016

Dear Commander Bennett:

At the monthly Executive Committee Meeting of the Department of the District of Columbia, The American Legion, on April 28, 1966, the attached resolution -- "Protecting Privacy of Veterans' Personnel Files and Records" -- was discussed and unanimously passed.

This is the first time that this resolution has been brought up before the Department Executive Committee, according to my knowledge.

Very truly yours,

Frank J. Specht
Chairman
Resolutions Subcommittee

FJS:bjr
Enc. 1

RESOLUTION

American Legion Post No. 10
Department of the District of Columbia

Whereas, the privacy of personnel files of all veterans are protected and governed by Federal regulations; and

Whereas, the Fourth Amendment to the U.S. Constitution guarantees citizens against unreasonable searches and seizures; and

Whereas, a recent 2 to 1 decision of the U.S. Court of Appeals for the District of Columbia has upheld a ruling of a lower court in the case of a veteran (Civil Action 2520-64, Bennett vs. Ford Motor Company) in the U.S. District Court for the District of Columbia; and

Whereas, the above ruling (REF. ACTION NO. 19370) is alleged to be detrimental to every veteran in that it allows any party who is engaged in such litigation to have full access to the veteran's Personnel Records; and

Whereas, such access may allegedly be used to gather information by another party to be used in any manner detrimental to the Veteran and in violation of his U.S. Constitutional rights; and

Whereas, such records of Veterans may contain classified information which should not be made available to persons outside the Military Establishment; and

Whereas, the aforementioned ruling of the U.S. Court of Appeals allegedly does establish this case as a precedent that can compromise existing protection for personnel records afforded by the U.S. Code of Federal Regulations Sec. 701.

NOW, THEREFORE, BE IT RESOLVED:

FIRST: That the American Legion declare its support for strict enforcement of all existing Federal Regulations and Constitutional rights regarding the privacy of Veterans' personnel files and records.

SECOND: The American Legion take any necessary action to safeguard the security and privacy of Veterans' Personnel Files and Records as provided for by Federal Regulations, in the event of a breach thereof.

THIRD: That a copy of this resolution be forwarded to the National Headquarters of The American Legion with the request that it be referred to The National Judge Advocate for review of the record and ruling in the case of Bennett v. Ford Motor Company, APPEAL NO. 19370 and if, in his opinion, the American Legion should file a brief as Amicus Curiae in the Supreme Court in said case, that he then take action forthwith.

The foregoing Resolution was adopted by the National Cathedral Post No. 10, Department of the District of Columbia, The American Legion, at a regular meeting March 30, 1966, with the Resolve, that the same be presented to the Department of the District of Columbia, American Legion, for appropriate action.

A true copy:

John Cornell Adj.

Norman Bennett

Commander, National Cathedral Post No. 10
Department of the District of Columbia

AFFIDAVIT OF PETITIONER

This affidavit is respectfully submitted because this case has heretofore been judged on the basis of unsupported allegations of the defendant and not true facts that are substantiated by valid, authoritative documented evidence which the plaintiff has heretofore been prevented from presentation by the actions of the defendant.

I have obtained authoritative documented proof that the misrepresentations alleged by the Defendant regarding statement made by Plaintiff in reference to the actions of the American Legion, Department of District of Columbia, and its interests as pertains to the rights of all veterans in this case, are not true.

This fact is typical of the continuous distortions of truth, misstatements of facts and misrepresentations upon which the Defendant has relied to justify his actions and which the lower federal courts have denied me the opportunity to submit documented proof that would nullify and discredit the Defendant's allegations.

It has been the Defendant's avowed purpose from the outset to seek to impugn my credibility with complete disregard of my honorable retirement as an officer from the U.S. Navy, and my service and business reputation for which I have worked hard to achieve.

This fact has not only been so stated by the Defendant, but exemplified by his unwarranted and malicious accusations as to my alleged unethical filing of civil damage suits, based on selected information illegally obtained by Defendant from my Confidential Service Records in violation of the rights granted by the Fourth Amendment to the U. S. Constitution and the governing Federal Regulations. I

have been advised by a high echelon representative of the Judge Advocate General's office of the U. S. Navy that this manner of access is unprecedented.

The Defendant has made the following allegations which are either untrue, distortions of facts, or misleading.

1. The inspection of Records was pursuant to a valid, outstanding subpoena duces tecum; this is not true.
2. The records were relevant to petitioner's qualifications as expert witness; this is not true.
3. The Defendant complied with the terms of its own subpoena, letters of conditions to the Navy Department, and complied with existing Federal Regulations safeguarding subject records; this is not true.
4. That none of the information or documents were "actually" used in Patent Trial; this statement is superficial since it does not present all the facts.
5. That subject documents extracted from the records were "rather routine in nature"; this is not true.
6. The "only publication" of the subject documents was to "his own secretary" and the "official custodian"; this is not true.

All the above contentions of the Defendant can be disproved by valid, documented evidence.

Subscribed and sworn to
before me, a notary
public this _____ day of
_____, 1966.

_____
Norman Bennett